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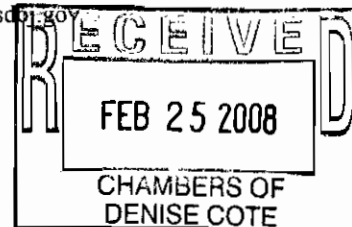
U.S. Department of Justice
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MEMO ENDORSED

February 22, 2008



By Hand Delivery

Hon. Denise L. Cote
United States District Judge
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Suite 1040
New York, New York 10007

Re: *Wilner, et al. v. National Security Agency, et al.*, 07-cv-3883-DLC

Dear Judge Cote:

This Office represents the Defendants in the above-referenced action, which concerns Plaintiffs efforts to obtain documents and other information under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552b, relating to the Terrorist Surveillance Program ("TSP"). I write to request a modification, as set forth below, of the previous briefing schedule set in this Court's October 30, 2007 Order. *See* Docket Entry 7. Neither the Defendants nor the Plaintiffs have previously sought any modification of this briefing schedule; Plaintiffs consent to the requested modification.

The Defendants request this relief for several reasons. First, the Defendants need additional time to both complete processing of the Plaintiffs request and continue discussions with Plaintiffs concerning the issues before the Court. This is due, in part, to the fact that undersigned counsel was assigned to handle this matter after the prior counsel for the Government, Ms. Bhattacharyya, was temporarily detailed to another component of the Department of Justice. This necessarily required undersigned counsel to become familiar with both the status of the Defendants' FOIA response, and the facts and law related to the motion for summary judgment. In addition, undersigned counsel is working with other attorneys on an opposition to a motion for preliminary injunction in another case also due February 22, 2008, in the District of Oregon. Second, the parties have continued to confer in the period following the entry of the Scheduling Order both over possible narrowing of issues before the Court and how to most effectively and efficiently present the remaining issues for the Court's consideration.

In light of those continuing discussions, the parties now request that litigation concerning

the anticipated motion for summary judgment from the Government, currently due February 22, 2008, be bifurcated into two tracks: (i) a "Glomar" track, related to the Defendants' determinations that, in response to Plaintiffs' first request as described in their Complaint, they could neither confirm nor deny whether any Plaintiff had been the target of surveillance under the TSP, and (ii) a non-"Glomar" track, related to the Defendants' determinations to withhold documents responsive to Plaintiffs' other request as identified in their Complaint. These are discrete legal issues and bifurcation along these lines would permit a portion of the case to proceed, while the parties continue to confer regarding the non-"Glomar" document issues. In turn, we believe this schedule would conserve the Court's and parties' resources and promote the speedy resolution of this case.

If the Court agrees, the parties jointly propose the following bifurcated schedule:

Glomar Track

March 18, 2008	Government to file motion for partial summary judgment relating to its "Glomar" defense, along with all supporting materials upon which the Government will rely
April 15, 2008	Plaintiffs to file opposition to Government's motion for summary judgment on Government's "Glomar" defense
May 6, 2008	Government to file reply in support of its motion for summary judgment on Government's "Glomar" defense
May 27, 2008	Plaintiffs to file sur-reply in opposition to Government's motion for summary judgment on Government's "Glomar" defense

There shall be no sur-reply.
dlc

Non-Glomar (Document) Track

March 28, 2008	Government to produce to Plaintiffs draft indices in support of its non-"Glomar" defense
April 18, 2008	Government to file its motion for summary judgment on document (non-"Glomar") defense, along with any declarations and modified or supplemental indices upon which the Government will rely
Week of April 28, 2008	The parties request that the Court set a status conference that would permit the parties to (i) discuss with the Court any outstanding issues related to the motion for summary judgment on document (non-"Glomar") defense, including any issues raised by Plaintiffs as to the adequacy of the information submitted by the Government in support of its motion for summary judgment; and (ii) set the remaining schedule on the Government's motion, including if necessary, briefing on issues related to the adequacy of the information submitted by the Government." ¹

Conference is scheduled for 4/28 at 2:00 pm

¹ Please note that the parties will continue to meet and confer on these issues in an attempt to narrow any outstanding disputes without Court intervention. If the parties are successful, I anticipate

So ordered.
James L. Cox
Feb 27, 2008

Thank you for your consideration of this request.

Respectfully,

A handwritten signature in black ink, appearing to read "Alexander K. Haas". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

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cc: Counsel for Plaintiffs (by electronic delivery)

that the parties would seek to vacate the status conference and would offer a further joint proposal on how to proceed.